

**APPLICANTS:**  
**Todd Blazek and Dawn Peacher**

**REQUEST:** A variance to allow a 6 foot high  
fence within the required front yard setback

**HEARING DATE:** May 11, 2005

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**  
**Case No. 5481**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANTS:** Todd Blazek and Dawn Peacher

**LOCATION:** 821 Woodmont Court / Magnolia Farms, Joppa  
Tax Map: 69 / Grid: 1C / Parcel: 138 / Lot: 50  
First Election District (1st)

**ZONING:** R3 / Urban Residential District

**REQUEST:** A variance pursuant to Section 267-24B(1) of the Harford County Code to permit a fence to exceed 4 feet in height (6 feet proposed) within the front yard setback in the R3/Urban Residential District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

First testified Dawn Peacher, a co-applicant. Ms. Peacher described her property as being an approximately ¼ acre lot improved by a split-level, 3-bedroom home. The home is currently occupied by the Applicants. The subject property, which was purchased by the Applicants in 2002, is also improved by an attached deck and garage.

Ms. Peacher's requested variance would allow her to construct a 6-foot high fence to be constructed along the property line which is adjacent to Fort Hoyle Road. In support of her request, Ms. Peacher stated that their property fronts on Woodmont Court, but also has frontage along Fort Hoyle Road. Accordingly, the property is required to maintain two front yard setbacks. The Applicants, when using their back deck, look out over Fort Hoyle Road. The property is further made unique, in the Applicant's opinion, by its' rear yard, which slopes down from the back of the house to Fort Hoyle Road. Photographs in the file further demonstrate this downward sloping topographical feature of the property.

Ms. Peacher feels that a fence along the back property line is essential to their enjoyment of their property, as well as their sense of security. Immediately across Fort Hoyle Road is Magnolia Middle School, clearly in view of the Applicants. Ms. Peacher and Mr. Blazek testified they are disturbed by the impact of the traffic along Fort Hoyle Road, including school buses and after-hours vehicles entering and leaving the school, and by noise generated by those vehicles. A fence would help screen them from that impact.

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The Applicants also state that their property is used as a short cut by neighboring children entering and leaving the development, as well as by children using dirt bikes and four-wheelers. The Applicants feel a fence is necessary to help alleviate these troublesome issues, although a 4-foot high fence would not be sufficient. Accordingly, they are requesting a variance for a 6-foot high fence.

The Applicants stated that other neighbors in the area have been granted variances for similar back yard fences.

The Applicants testified that none of their neighbors have expressed any problem with this request. The Magnolia Farms Homeowners Association has reviewed the Applicants' request and has given its approval.

The Applicants testified that the fence would be approximately 10 feet from the Fort Hoyle Road sidewalk and should not, accordingly, impact anybody using that sidewalk.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated that the lot is a double-frontage lot with frontage on both Woodmont Court and Fort Hoyle Road. As such the lot is subject to two front yard setback requirements which make it unusual. Mr. McClune indicated that this area along Fort Hoyle Road is subject to high traffic flow, which is exacerbated by Magnolia Middle School being directly across Fort Hoyle Road from the subject property.

Mr. McClune also agreed with the testimony of the Applicants' that the rear yard slope down to Fort Hoyle Road increases the exposure of the house to traffic and noise generated by the school.

In Mr. McClune's opinion a 4-foot fence, which is allowed by Code without a variance, would be of no use given these characteristics. A fence 6 feet in height would provide some necessary screening to the property. Mr. McClune also stated that a fence along the rear property line would be at least 12 – 15 feet away from the travel portion of Fort Hoyle Road and would present no line-of-sight problems to passing motorists, nor would it interfere with the pedestrians use of the sidewalk along Fort Hoyle Road.

The Department, accordingly, recommends approval of the variance.

No testimony or evidence was presented in opposition.

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### **APPLICABLE LAW:**

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

*A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*

*(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*

*(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*

*B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*

*C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

The subject property is an approximately 7,500 square foot parcel, improved by an attractive single-family home, with a two-car garage and what appears to be a fairly newly constructed rear deck. The property is located within a subdivision of similar homes.

The property is somewhat unusual in that it fronts on Woodmont Court, and backs up to Fort Hoyle Road which has a higher traffic flow, by far, than Woodmont Court.

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Accordingly, the property is considered to have two front yards and is required to maintain two front yard setbacks. The use of the property is further impacted by the topography of its rear yard, which has a pronounced down-slope to Fort Hoyle Road. While there are pine trees planted along the rear lot line, these lot characteristics cause an occupant of the property to have a direct view of Fort Hoyle Road and Magnolia Middle School, and to be fully subject to the noise of vehicles and pedestrians using Fort Hoyle Road and entering and leaving Magnolia Middle School. No doubt, screening in such a situation is necessary in order to improve the living environment of the occupant's subject property.

The Applicants further testified that the request for a variance is supported by their neighbors and the community Homeowners Association. Indeed, area neighbors in similar situations had requested and received similar variances.

It is, accordingly, found that the subject property is unique for reasons stated above. These unique factors contribute to a practical difficulty in that the Applicants are unable to use their property in a way similar to others in the neighborhood, and in a way which is normally enjoyed by others throughout Harford County.

It is further found that the variance request is the minimum necessary in order to alleviate the practical difficulty, and would have no adverse impact on others in the neighborhood or on adjoining properties.

### **CONCLUSION:**

Accordingly, it is recommended that the requested variance be granted, subject to the Applicants obtaining all necessary permits and inspections.

Date: June 16, 2005

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner

**Any appeal of this decision must be received by 5:00 p.m. on JULY 15, 2005.**